

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

Royale Anthony Jackson,

Plaintiff,

V.

State of Nevada,

Defendant.

Case No. 2:22-cv-01036-GMN-DJA

Order and Report and Recommendation

This matter is before the court on *pro se* Plaintiff Royale Anthony Jackson's application to proceed *in forma pauperis* (ECF No. 1), filed on June 30, 2022. Plaintiff brings a lawsuit challenging court orders related to his conviction and resulting sentence in Nevada state court. (ECF No. 1-1). Plaintiff alleges that the grand jury and the Nevada state court violated his constitutional rights and that, because he owns the property at which he was arrested for trespassing, his conviction is invalid.

I. *In forma pauperis* application.

Plaintiff submitted the affidavit required by 28 U.S.C. § 1915(a) showing an inability to prepay fees or costs or give security for them. Accordingly, the court will grant Plaintiff's request to proceed *in forma pauperis*. The court now screens Plaintiff's complaint.

II. Screening.

Courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1), (2). In addition to the screening requirements under § 1915A, the Prison Litigation Reform Act

1 requires a federal court to dismiss a prisoner's claim if it "fails to state a claim on which relief
 2 may be granted." 28 U.S.C. § 1915(e)(2); *accord* Fed. R. Civ. Proc. 12(b)(6).

3 Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for
 4 failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668
 5 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must "contain sufficient
 6 factual matter, accepted as true, to state a claim to relief that is plausible on its face." *See*
 7 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The court liberally construes pro se complaints and
 8 may only dismiss them "if it appears beyond doubt that the plaintiff can prove no set of facts in
 9 support of his claim which would entitle him to relief." *Nordstrom v. Ryan*, 762 F.3d 903, 908
 10 (9th Cir. 2014) (quoting *Iqbal*, 556 U.S. at 678).

11 In considering whether the complaint is sufficient to state a claim, all allegations of
 12 material fact are taken as true and construed in the light most favorable to the plaintiff. *Wyler*
 13 *Summit P'ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted).
 14 Although the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff
 15 must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S.
 16 544, 555 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.*
 17 Unless it is clear the complaint's deficiencies could not be cured through amendment, a pro se
 18 plaintiff should be given leave to amend the complaint with notice regarding the complaint's
 19 deficiencies. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

20 Here, Plaintiff seeks to overturn his state court conviction and for the Court to give
 21 Plaintiff possession of the property where he was arrested for trespassing. (ECF No. 1-1). As a
 22 preliminary matter, it is unclear if Plaintiff is currently incarcerated or under supervision. His
 23 application to proceed *in forma pauperis* indicates he is homeless (albeit in the wrong section of
 24 the form). (ECF No. 1 at 3). But Plaintiff's complaint appears to include an inmate number.
 25 (ECF No. 1-1 at 1). And while Plaintiff lists the address of the property he alleges he owns as his
 26 mailing address, mail to Plaintiff at that address has been returned as undeliverable and many of
 27 the documents Plaintiff attaches indicate that the home is occupied by someone else. (ECF No.
 28 4); (ECF No. 3-1 at 5); (ECF No. 6 at 6).

1 Additionally, Plaintiff's initial complaint—attempting to appeal state court orders—and
2 his later supplement—titled as a petition for a writ of habeas corpus—indicate that he is
3 attempting to file a habeas petition. (ECF No. 3-1). However, if a § 1983 case seeking damages
4 alleges constitutional violations that would necessarily imply the invalidity of a conviction or
5 sentence, the prisoner must establish that the underlying sentence or conviction has been
6 invalidated on appeal, by habeas petition, or through a similar proceeding. *See Heck v.*
7 *Humphrey*, 512 U.S. 477, 483-87 (1994). Under *Heck*, a party who was convicted of a crime is
8 barred from bringing a suit under § 1983 if a judgment in favor of that party would necessarily
9 imply the invalidity of the conviction or sentence. *See Whitaker v. Garcetti*, 486 F.3d 572, 581
10 (9th Cir. 2007) (citing *Heck*, 512 U.S. at 114).

Plaintiff's complaint directly attacks the validity of his criminal conviction. But Plaintiff does not allege his conviction or sentence has been reversed or otherwise invalidated. And to the extent Plaintiff is attempting to file a habeas petition, he has not used the correct form. Given that this § 1983 case necessarily implies the invalidity of Plaintiff's conviction or sentence, the court will recommend that Plaintiff's complaint be dismissed without leave to amend.

ORDER

18 **IT IS THEREFORE ORDERED** that Plaintiff's application to proceed *in forma*
19 *pauperis* (ECF No. 1) is **granted**. Plaintiff shall not be required to pre-pay the filing fee.
20 Plaintiff is permitted to maintain this action to conclusion without the necessity of prepayment of
21 any additional fees or costs or the giving of a security therefor. This order granting leave to
22 proceed *in forma pauperis* shall not extend to the issuance and/or service of subpoenas at
23 government expense.

24 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to file Plaintiff's
25 complaint (ECF No. 1-1) on the docket but shall not issue summons.

26 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to mail Plaintiff
27 a copy of the Information and Instructions for Filing a Petition for Writ of Habeas Corpus
28 Pursuant to 28 U.S.C. § 2254. This form can also be found at: [chrome-](#)

1 [extension://efaidnbmnnibpcajpcglclefindmkaj/https://www.nvd.uscourts.gov/wp-content/uploads/2017/08/2254-Habeas-Petition-NOT-Sentenced-to-Death-Packet.pdf.](https://www.nvd.uscourts.gov/wp-content/uploads/2017/08/2254-Habeas-Petition-NOT-Sentenced-to-Death-Packet.pdf)
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4 **RECOMMENDATION**

5 **IT IS RECOMMENDED** that the complaint (ECF No. 1-1) be **dismissed with**
6 **prejudice** for failure to state a claim upon which relief can be granted.

7 **IT IS FURTHER RECOMMENDED** that Plaintiff's petition for writ of habeas corpus
8 (ECF No. 3), motion to intervene (ECF No. 6), motion for summary judgment (ECF No. 11), and
9 motion for judgment on the pleadings (ECF No. 13) be denied as moot.

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11 **NOTICE**

12 This report and recommendation is submitted to the United States District Judge assigned
13 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation
14 may file a written objection supported by points and authorities within fourteen days of being
15 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely
16 objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d
17 1153, 1157 (9th Cir. 1991).

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19 DATED: August 29, 2022

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22 DANIEL J. ALBREGTS
23 UNITED STATES MAGISTRATE JUDGE
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